

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

JEFFREY WELTHER,

Plaintiff,

v

Case No. 2:14-cv-11001-SJM-MKM  
Hon. Stephen J. Murphy III

SCHLOTTMAN & WAGNER, PC,  
a Michigan Professional  
Corporation.

Defendant.\_\_\_\_\_ /

ANSWER TO PLAINTIFF'S MOTION (Doc 25)  
TO FILE FIRST AMENDED COMPLAINT

Now comes Schlottman and Wagner PC, by and through counsel Thomas J. Budzynski, and in answer to the motion to amend complaint as filed herein states as follows:

1. It is well known and elementary that amendments should be freely granted in the interest of justice and where not intended for an improper purpose such as harassment.

2. The matter involved herein is a FDCPA suit on a \$220.00 collection.

3. The suit was filed after all correspondence and documents were in fact in hand by the filing party, who had in fact received the correspondence.

4. The statement in the motion that the plaintiff only recently discovered that Richard Wagner had signed the correspondence is, to be generous, a stretch. It is a fact that has been known since pre-suit.

5. That the defendant herein as named originally was and is a professional corporation. The defendant is therefore covered by MCLA 450.1285(2) which retains the individual liability of a member of a professional firm for individual acts.

6. The law is elementary, has been in effect for an extended period, at a minimum 35 years to the knowledge of this counsel.

7. To claim at this date that it was only recently discovered by a firm which claims to be expert in FDCPA cases, and which has been in existence for some time, frankly smells. It appears to be a matter of running fees.

8. The proposed defendant was known prior to filing the suit, the proposed defendant is the member of a professional corporation, a fact also known prior to filing. The proposed defendant would therefore have retained personal liability pursuant to the Michigan Corporation Act as applicable to personal liability.

9. It would appear therefore that the proper defendant may in fact be the proposed defendant, and not the current defendant under the movant's theory. Given this is a two man firm, a well known fact, and testimony will indicate that the only professional responsible for the underlying creditor is the proposed defendant, the movant appears to be inventing multiple parties for reasons that are in fact harassing.

10. That while settlement negotiations are not admissible, the fact that they took place immediately upon receipt of the complaint and prior to a motion to dismiss, would also be indicia of bad faith and harassment.

WHEREFORE, the defendants herein and the proposed defendant request that the motion be denied, and costs and fees be awarded under 28 USC 1927 for unnecessarily compounding litigation and requiring a response to the motion. Costs and attorney fees in the amount of \$1,500.00 appear to be reasonable.

Respectfully submitted,

/s/ Thomas J. Budzynski  
Thomas J. Budzynski PC  
Attorney for Defendants  
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P26355

Dated: 10/22/14

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BRIEF IN SUPPORT  
ANSWER TO PLAINTIFF'S MOTION (Doc 25)  
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Schlottman and Wagner PC, by and through counsel Thomas J. Budzynski, **cite to the Court, MCLA 450.1285(2)** which retains the individual liability of a member of a professional firm for individual acts.

Respectfully submitted,

/s/ Thomas J. Budzynski  
Thomas J. Budzynski PC  
Attorney for Defendants  
43777 N. Groesbeck Hwy.  
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CERTIFICATE OF SERVICE  
ANSWER TO PLAINTIFF'S MOTION (Doc 25)  
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I hereby certify that on October 22, 2014, I electronically filed the foregoing Paper(s) with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Gary D. Nitzkin  
gnitzkin@creditor-law.com, aburdick@creditor-law.com, sarah@micreditlawyer.com, jlamanna@creditor-law.com  
Travis Shackelford  
Tshackelford@creditor-law.com

and I hereby certify that I have mailed by United States Postal Service the Paper(s) to the following non-ECF participants:

/s/ Marilyn E. Lewis  
Secretary to  
Thomas J. Budzynski P26355  
Thomas J. Budzynski PC  
Attorney for Defendants  
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